

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5509 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

K.P.T.PILLAI & ANR.

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR PV HATHI for Petitioner

MS SIDDHI TALATI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 14/08/97

ORAL JUDGMENT

#. The petitioners, two in number, Stenographers, Grade-II, in the office of respondents No.2 and 3 respectively, have filed this Special Civil Application and prayer has been made for declaration that they were regularly appointed from 2nd November 1961 and 30th June 1962 respectively as Stenographers, Gr.II, and for consequential benefits.

#. The facts of the case in brief are that the petitioners were appointed as Stenographers, Gr.II, on 2.11.61 and 30.6.62 respectively. The petitioners state that they were appointed after passing competitive examination and interview held by the concerned offices.

#. The appointment order of petitioner No.1 has been produced on record of the Special Civil Application wherein it has been given out that the appointment is made as temporary measure only until further orders and is terminable at any time without notice from the Government. The petitioners admittedly passed the departmental regularization test conducted by GPSC on 23rd March 1976 and 10th May 1977 respectively. They have been given seniority in the cadre of English Stenographer Gr.II with reference to the date of regularization of their services. The provisional seniority list has been published on 9.9.81. The petitioners filed a representation but reply was not given. Thereafter the revised provisional seniority list was published on 15th April 1983 against which representation has been made by petitioners. The respondents No.4 and 5, under the order dated 19th February 1981 effective from 1st July 1979 were given selection scale. That order has also been challenged by petitioners before this Court. One of the prayers made by petitioners in this Special Civil Application is for giving directions to the respondent No.1 to prepare and publish the final seniority list after considering the objections filed by petitioners and after giving an opportunity before issuing any further orders of selection grade.

#. None of the counsel for the parties are able to state before the Court whether the provisional list has been finalized or not and if it is finalized, what grievance now survives of the petitioners. So the resultant position remains that challenge has been made by petitioners in this Special Civil Application to the provisional seniority list. The provisional seniority list is only a tentative list subject to correction and no cause of action has accrued to the petitioners to challenge that list unless it is finalized. The petition filed by petitioners against the provisional seniority list is premature. However as respondents No.4 and 5 were given selection scale, the petitioners have approached this Court. It is not fair on the part of respondents to act upon the provisional seniority list and once the provisional seniority list is prepared, it should be finalized expeditiously and unless and until

there is an emergency of making promotions, then only it has to be acted upon and those promotions should be adhoc and temporary. Acting on the provisional seniority list otherwise is certainly against the principles of natural justice. There is a possibility of acceptance of objections of the persons who have not been given appropriate seniority in the said list. The respondent-State should take all the care to see that such complaints may not arise. Seniority should be finalized at the earliest so that litigation may be avoided in the Court. It is also in the interest of Government. Be that as it may, this petition has been filed in the year 1985 and after expiry of twelve years many things would have changed and there is a possibility that no grievance of petitioners would have been surviving till date or the grievance would have been sorted out. In service matters, time and again, this Court has observed that it is utmost necessary for parties to bring on record, all the subsequent events and developments which have taken place during the interregnum. In case this would have been done in the present case, then the possibility of the matter becoming infructuous cannot be ruled out. That course, otherwise also, would have saved valuable time of the Court. The Court, in that eventuality would have concentrated only on the issue which now survives and not on all the issues. There is another aspect of the matter. In the present case, it is too difficult to accept that the provisional seniority list which has been published in the year 1983 would not have been finalized till date. So, in absence of positive averments on behalf of parties, the Court has to decide the matter in vacuum and the directions given in the petition may be of no effect or value.

#. Be that as it may, interest of justice will be met in case this Special Civil Application is disposed of with directions that in case so far the provisional seniority list of English Stenographers, Gr.II, as published on 15th April 1983, has not been finalized, the same may be finalized within a reasonable time, say within three months from the date of receipt of certified copy of this order. If the petitioners so desire, they may also be given opportunity of hearing. In case the petitioners' grievance for giving them higher seniority is accepted, then they shall be entitled for all consequential benefits following therefrom. In case the claim of petitioners is not acceptable, a reasoned order may be passed and the copy of the same may be sent to the petitioners by registered post A.D. However, in case the aforesaid provisional seniority list has been finalized,

then this exercise is not required to be undertaken by respondents and in that eventuality, this Special Civil Application shall stand dismissed as having become infructuous.

#. The Special Civil Application and Rule stand disposed of in aforesaid terms with no order as to costs.

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(sunil)